LETTER AMENDMENT TO CONSENT AGREEMENT

BETWEEN

OAKLAND BASE REUSE AUTHORITY,

CITY OF OAKLAND ACTING BY AND THROUGH THE OAKLAND REDEVELOPMENT AGENCY AND

STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

This LETTER AMENDMENT TO CONSENT AGREEMENT ("Amendment") is entered into as of the Aday of May of Ma

WHEREAS, the Parties entered into that certain Consent Agreement dated as of May 19, 2003 (the "Agreement") to implement the Oakland Army Base Remedial Action Plan ("RAP") and associated Risk Management Plan approved by DTSC on September 26, 2002 concerning that portion of the former Oakland Army Base commonly known as the No-Cost Economic Development Conveyance parcel ("EDC Parcel"); and

WHEREAS, on August 2, 2004, DTSC amended the RAP (the "RAP Amendment") to address the adjacent portion of the former Oakland Army Base owned by the United States of America, acting through the Secretary of the Army ("Army") commonly known as the Subaru Lot (Parcels 15A and 15B, as described in Exhibits A and B); and

WHEREAS, the Army executed that certain Covenant to Restrict Use of Property – Environmental Restriction ("Covenant") dated August 31, 2004 and recorded against the Subaru Lot on November 18, 2004; and

WHEREAS, immediately after the recording of the Covenant, the Army conveyed the Subaru Lot to OBRA through a quitclaim deed from the Army and thereupon OBRA assumed responsibility for compliance with the Covenant; and

WHEREAS, immediately after conveyance of the full Subaru Lot, OBRA will convey 2.51 acres (Parcel 15A, Exhibit A) to the City of Oakland, acting by and through its Board of Port Commissioners (the "Port"); and

WHEREAS, the Parties desire to amend the Agreement to recognize that the RAP has been amended, that OBRA is responsible for compliance with the Covenant, that those provisions of the Agreement consistent with the RAP Amendment and Covenant apply to the Subaru Lot, and that the City and the Port will jointly request in writing that DTSC approve assignment of OBRA's rights and obligations under this Agreement to the Port with respect to Parcel 15A.

NOW, THEREFORE, the Parties hereto agree as follows:

- 1. The definition of "Site" in Section 1.2 of the Agreement is hereby amended to include the Subaru Lot, as depicted on Exhibits A and B to this Amendment.
- 2. The environmental condition of the Subaru Lot and remedial action requirements for the Subaru Lot are described in that certain Amendment to the Oakland Army Base Remedial Action Plan approved by DTSC on August 2, 2004 (the "RAP Amendment").
- 3. The Parties agree that future use of the Subaru Lot shall be restricted by that certain Covenant dated as of August 31, 2004 and recorded against the Subaru Lot on November 18, 2004. Specifically, the City shall retain all inspection, certification, and reporting responsibilities as required in the Covenant, Section 4.02(a) and responsibility to pay all costs associated with the administration of the Covenant pursuant to the California Code of Regulations, section 67391.1(h).
- 4. The remedial action requirements for the Subaru Lot are described in the RAP Amendment.
- 5. All of the provisions of the Agreement consistent with the RAP Amendment and the Covenant apply to the Subaru Lot, except that no further financial assurances will be required under Section 4.18 of the Agreement, and that no pre-transfer notice under Section 4.25(a) shall be required to convey Parcel 15A of the Subaru Lot to the Port of Oakland.

CITY OF OAKLAND:

By:	Deborah A. Edgerly City Administrator	Date:	5-2-05
	Resolution No.:		
	Approved as to form and legality: By:	Date:	4/28/05
	Alix A. Kosenthal Deputy City Attorney		
REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND:			
Ву:	Deborah A. Edgerly Agency Administrator	Date:	5-2-05
	Resolution No.:		
	Approved as to form and legality:		/ / -
	By: Alix A. Rosenthal Deputy City Attorney	Date:	4/28/05

OAKLAND BASE REUSE AUTHORITY:

By:

Executive Director

Oakland Base Reuse Authority

Resolution No.:

Approved as to form and legality:

By:

General Counsel, OBRA

DEPARTMENT OF TOXIC SUBSTANCES CONTROL:

By:

Anthony J. Landis, P.E.

Chief, Northern California Operations

Office of Military Facilities

Date: 4-12-05

Exhibit A

Legal Description and Map for Parcel 15A

EXHIBIT A Legal Description A Portion of East Maritime Army Reserve Property

All that certain real property situated in the City of Oakland, County of Alameda, State of California, described as follows:

Parcel 15A

A portion of the Parcels of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded April 23, 1941, in Book 4017 of Official Records, Page 485 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4017 O.R. 485), more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument also being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 48°22'05" East, 5692.24 feet to the northern most corner of Parcel 1, Tract 1 as described in said Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the Above Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S, District Court of the United States in and for the Northern District of California, Southern Division, recorded October 22, 1951 in Book 6566 of Official Records, Page 301 in the Office of the Recorder of said Alameda County (hereinafter referred to as 6566 O.R. 301), said corner being the northwest terminus of the course described as "North 71°40'17" West 585.40 feet" in the description of said Parcel 1, Tract 1 (6566 O.R. 301), said corner being marked by a 2 ½" brass disk with punch mark stamped "City of Oakland Survey Station 8NW9" as shown on Record of Survey No. 1705, filed in Book 26 of Records of Surveys, at Page 1, Alameda County Official Records;

Thence South 57°59'13" East, 432.18 feet to a point on the generally northeastern line of Parcel A as described in an unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd R.S.C., dated December 17, 1998, said Parcel A being commonly referred to as the "Subaru Lot" (said Parcel A will hereinafter be referred to as the Subaru Lot), being a point on the course described as "South 71°25'25" East, 87.02 feet" in the description of said Parcel A (the Subaru Lot), and being the POINT OF BEGINNING of Parcel 15A as herein described;

Thence along the northeastern, eastern and southeastern lines of said Parcel A (the Subaru Lot) the following nine courses:

- 1) South 71°25'40" East, 25.43 feet to the beginning of a non-tangent curve concave southwesterly, having a radius of 354.97 feet and a central angle of 59°49'02", from which the radius point bears South 30°09'08" West, said beginning of curve being marked by a 1 ½" brass disk with bolt stamped "LS 6379";
- 2) along said curve to the right, an arc distance of 370.59 feet to the beginning of a compound curve concave westerly, having a radius of 199.99 feet and a central angle of 25°52'29°, said point of compound curvature being marked by a nail and washer with tag stamped "LS 6379°;
- 3) along said curve to the right, an arc distance of 90.32 feet to a point of tangency being marked by a nail and washer with tag stamped "LS 6379";
- 4) South 25°50'39" West, 100.04 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";
- 5) South 30°42'24" West, 148.96 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";
- 6) South 37°08'59" West, 99.92 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";
- 7) South 40°33'22" West, 49.03 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";
- 8) South 49°48'18" West, 93.04 feet to an angle point in said line;
- 9) South 56°00'39" West, 30.42 feet to the a point on the generally northeastern line of Parcel 56444 as described in that certain Quitclaim Deed, recorded on February 13, 2002 as Document No. 2002072863 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 2002072863), said point being the beginning of a non-tangent curve concave southwesterly, having a radius of 1647.00 feet and a central angle of 6°06'10", from which beginning the radius point bears South 46°46'37" West;

Thence along the generally northeastern line of said Parcel 56444 (Doc. 2002072863) along said curve to the left, an arc distance of 175.43 feet to the point of a cusp from which the radius point bears South 40°40'27" West, being the beginning of a non-tangent curve concave westerly, having a radius of 1542.01 feet and a central angle of 6°28'40", from which beginning the radius point bears North 31°02'02" West;

Thence along said curve to the left, an arc distance of 174.33 feet to an angle point from which the radius point bears North 37°30'42" West, being the beginning of a non-tangent curve concave northwesterly, having a radius of 302.83 feet and a central angle of 16°33'59", from which the radius point bears North 34°34'15" West;

Thence along said curve to the left, an arc distance of 87.56 feet to the beginning of a compound curve concave northwesterly, having a radius of 906.45 feet and a central angle of 4°28'14";

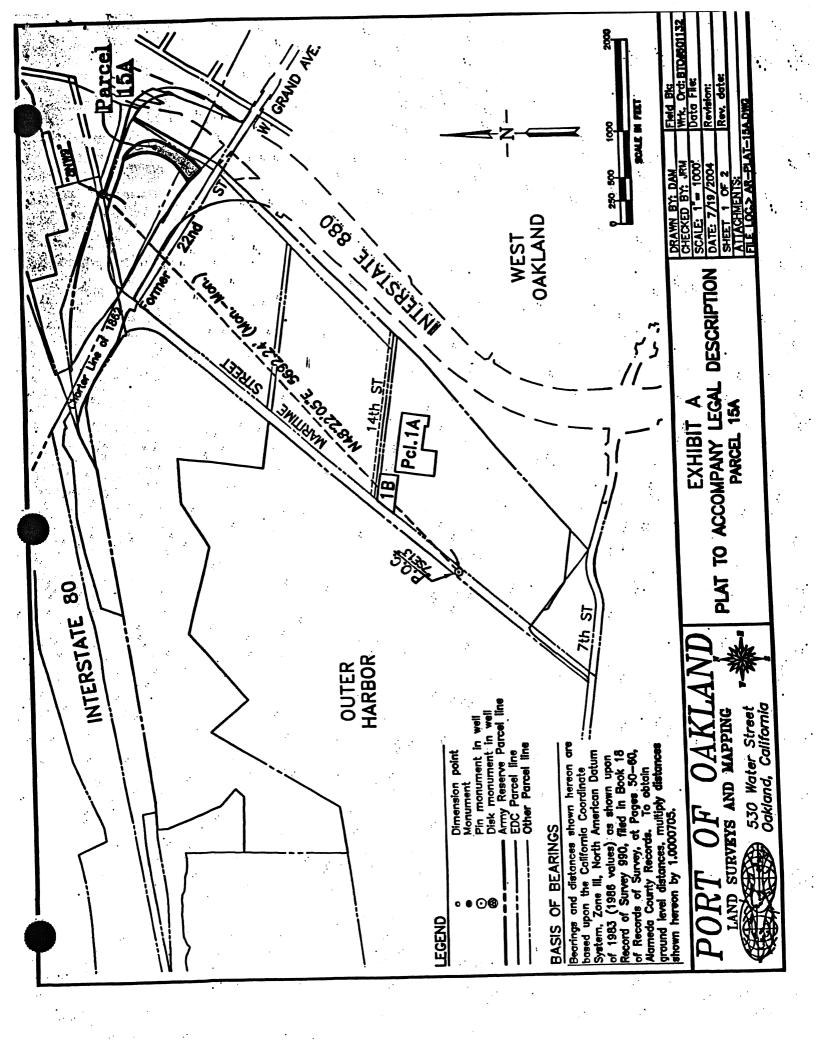
Thence along said curve to the left, an arc distance of 70.73 feet to the beginning of a compound curve concave westerly, having a radius of 426.09 feet and a central angle of 41°30'48";

Thence along said curve to the left, an arc distance of 308.72 feet to the beginning of a compound curve concave southwesterly, having a radius of 444.22 feet and a central angle of 25°38'05":

Thence along said curve to the left, an arc distance of 198.75 feet to the POINT OF BEGINNING, containing 109,537 square feet (2.514 acres), more or less, measured in ground distances, as depicted on the Plat to Accompany Legal Description, attached and hereby made a part of this Legal Description.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

End of Description



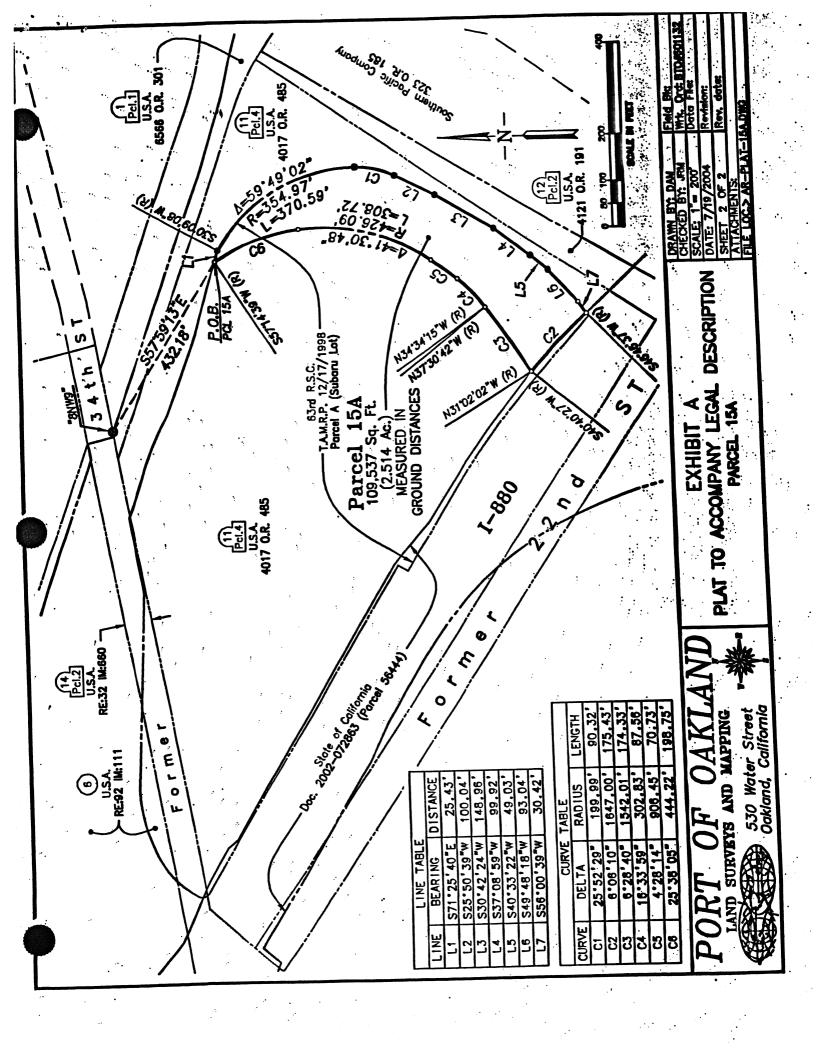


Exhibit B

Legal Description and Map for Parcel 15B

Schedule 1.1 (92) Legal Description West Maritime Army Reserve Property Oakland Army Base

All that certain real property, in the City of Oakland, County of Alameda, State of California, described as follows:

Parcel 15B

A portion of the Parcels of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded April 23, 1941, in Book 4017 of Official Records, Page 485 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4017 O.R. 485); A portion of the lands described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded United States in and for the Northern District of California, Southern Division, recorded Alameda County (hereinafter referred to as Reel: 32, Image:660); A portion of the lands Alameda County (hereinafter referred to as Reel: 32, Image:660); A portion of the lands Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded May 23, 1960, Reel 092, Image 111 of Official Records, in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel:092, Image:111), all of which are more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument also being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 48°22'05" East, 5692.24 feet to the northern most corner of Parcel 1, Tract 1 as described in said Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the Above Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S, District Court of the United States in and for the Northern District of California, Southern Division, recorded October 22, 1951 in Book 6566 of Official Records, Page 301 in the Office of the Recorder of said Alameda County (hereinafter referred to as 6566 O.R. 301), said corner being the northwest terminus of the course described as "North 71°40'17" West 585.40 feet" in the description of said Parcel 1, Tract 1 (6566 O.R. 301), said corner being marked by a 2 ½" brass disk with punch mark stamped "City of Oakland Survey Station 8NW9" as shown on Record of Survey No. 1705, filed in Book 26 of Records of Surveys, at Page 1, Alameda County Official Records;

Thence South 57°59'13" East, 432.18 feet to a point on the generally northeastern line of Parcel A as described in an unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd R.S.C., dated Military Traffic Management Command of the Oakland Army Base to the 63rd R.S.C., dated December 17, 1998, said Parcel A being commonly referred to as the "Subaru Lot" (said Parcel A will hereinafter be referred to as the Subaru Lot), being a point on the course described as "South 71°25'25" East, 87.02 feet" in the description of said Parcel A (the Subaru Lot), said "South 71°25'25" East, 87.02 feet" in the description of said Parcel A (the Subaru Lot), said point being the beginning of a non-tangent curve concave southwesterly, having a radius of point being the beginning of a non-tangent curve concave southwesterly, having a radius of 25°38'05", from which the radius point bears 444.22 feet and a central angle of 25°38'05", from which the radius point bears South 57°14'39" West, and being the POINT OF BEGINNING of Parcel 15B as herein described;

Thence departing from said northeastern line of said Parcel A (the Subaru Lot) along said curve to the right, an arc distance of 198.75 feet to the beginning of a compound curve concave westerly, having a radius of 426.09 feet and a central angle of 41°30'48";

Thence along said curve to the right, an arc distance of 308.72 feet to the beginning of a compound curve concave northwesterly, having a radius of 906.45 feet and a central angle of 4°28'14";

Thence along said curve to the right, an arc distance of 70.73 feet to the beginning of a compound curve concave northwesterly, having a radius of 302.83 feet and a central angle of 16°33'59";

Thence along said curve to the right, an arc distance of 87.56 feet to an angle point from which the radius point bears North 34°34'15" West, being the beginning of a non-tangent curve concave northwesterly having a radius of 1542.01 feet and a central angle of 6°28'40", from which beginning the radius point bears North 37°30'42" West;

Thence along said curve to the right, an arc distance of 174.33 feet to a point on the generally northeastern line of Parcel 56444 as described in that certain Quitclaim Deed, recorded on February 13, 2002 as Document No. 2002-072863 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 2002-072863), said point being an angle point from which the radius point bears North 31°02'02" West, and also being the beginning of a non-tangent curve concave southwesterly, having a radius of 1647.00 feet and a central angle of 2°40'12", from which beginning the radius point bears South 40°40'27" West;

Thence along the generally northeastern line of said Parcel 56444 (Doc. 2002-072863) the following eight courses:

- 1) along said curve to the left, an arc distance of 76.75 feet to an angle point from which the radius point bears South 38°00'16" West, being the beginning of a non-tangent curve concave southwesterly, having a radius of 1647.00 feet and a central angle of 7°24'24", from which beginning the radius point bears South 39°39'54" West;
- 2) along said curve to the left, an arc distance of 212.91 feet to a point of tangency;

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- 3) North 57°44'30" West, 113.40 feet to an angle point;
- 4) North 49°58'48" West, 124.70 feet to an angle point;
- 5) North 59°26'20" West, 696.99 feet to an angle point;
- 6) North 38°53'13" West, 28.48 feet to an angle point;
- 7) North 59°26'21" West, 95.01 feet to an angle point;
- 8) North 65°41'40" West, 26.04 feet to a point on the generally northwestern line of said Parcel A (the Subaru Lot), said point being the beginning of a non-tangent curve concave easterly, having a radius of 20.00 feet and a central angle of 29°55'43", from which beginning the radius point bears North 87°47'11" East;

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Thence along the northwestern, northern and northeastern lines of said Parcel A (the Subaru Lot) the following sixteen courses:

- 1) along said curve to the right, an arc distance of 10.45 feet to the beginning of a compound curve concave southeasterly, having a radius of 199.99 feet and a central angle of 39°56'30°, said point of compound curvature being marked by a 1 ½" brass disk and spike stamped "LS 6379°;
- 2) along said curve to the right, an arc distance of 139.42 feet to a point of tangency marked by a 1" iron pipe with plug and tack stamped "LS 6379";
- 3) North 67°39'24" East, 25.68 feet to the beginning of a curve concave southerly, having a radius of 299.98 feet and a central angle of 25°11'31";
- 4) along said curve to the right, an arc distance of 131.90 feet to a point of tangency marked by a 1" iron pipe with plug stamped "LS 6379";
- 5) South 87°09'05" East, 415.50 feet to an angle point in said line, said point being marked by a 1" iron pipe with plug stamped "LS 6379";
- 6) North 80°41'00" East, 170.83 feet to an angle point in said line, said point being marked by a 1" iron pipe with plug stamped "LS 6379";
- 7) South 70°15'39" East, 49.25 feet to an angle point in said line, said point being marked by a 1 1/2" brass disk with bolt stamped "LS 6379";
- 8) South 72°38'25" East, 67.85 feet to an angle point in said line, said point being marked by a 1 1/2" brass disk with bolt stamped "LS 6379";
- 9) South 69°32'54" East, 44.74 feet to an angle point in said line, said point being marked by a 1 1/2" brass disk with bolt stamped "LS 6379";

- 10) South 66°07'36" East, 44.94 feet to an angle point in said line, said point being marked by a 3/2" brass tag in concrete stamped "LS 6379";
- 11) South 63°28'21" East, 40.88 feet to an angle point in said line, said point being marked by a 1 1/2" brass disk with bolt stamped "LS 6379";
- 12) South 69°21'45" East, 49.64 feet to an angle point in said line, said point being marked by a 1 1/2" brass disk with bolt stamped "LS 6379":
- 13) South 70°14'16" Bast, 101.26 feet to an angle point in said line, said point being marked by a 1 1/2" brass disk with bolt stamped "LS 6379";
- 14) South 71°46'24" East, 32,44 feet to an angle point in said line, said point being marked by a 1 1/2" brass disk with bolt stamped "LS 6379";
- 15) South 74°35'56" East, 103.17 feet to an angle point in said line, said point being marked by a 1 1/2" brass disk with bolt stamped "LS 6379":
- 16) South 71°25'40" East, 61.59 feet to the POINT OF BEGINNING, containing 719,497 square feet (16.517 acres), more or less, measured in ground distances, as depicted on the Plat to Accompany Legal Description, attached and hereby made a part of this Legal Description.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

End of Description

I hereby state that this description and its accompanying plat were prepared by me, or under my direction, in October 2003.

License Expires: 03/31/06

